

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 23-20174-CR-MARTINEZ

UNITED STATES OF AMERICA,

v.

LUIS ESTRADA CARBAJAL and
ERASMO DE LA PAZ CALIXTO,

Defendants.

ORDER GRANTING DEFENDANT'S MOTION TO QUASH SUBPOENA

THIS CAUSE came before this Court on Defendant Luis Estrada Carbajal's Motion to Quash Subpoena (the "Motion"), (ECF No. 55). This Court has reviewed the Motion, applicable portions of the record, and applicable law and is otherwise fully advised in the premises. Accordingly, after careful consideration, the Motion is **GRANTED** as set forth herein.

On July 12, 2023, Mr. Carbajal pleaded guilty to one count of conspiracy to possess with intent to distribute a controlled substance in violation of 21 U.S.C. § 846 (Count 1 of the Indictment), and one count of illegal re-entry of a removed alien in violation of 8 U.S.C. § 1326(a), (b)(2) (Count 3 of the Indictment), before Magistrate Judge Jacqueline Becerra, who recommended that this Court accept Mr. Carbajal's guilty plea. (ECF No. 27.) On July 28, 2023, this Court adopted Judge Becerra's Report and Recommendation. (ECF No. 30.) On September 6, 2023, this Court sentenced Mr. Carbajal to forty-four months' imprisonment as to Counts 1 and 3, to be served concurrently, and a three-year term of supervised release. (ECF No. 45.)

Following this Court's imposition of the sentence, the Government approached Mr. Carbajal's attorney, Abigail E. Becker, and informed her that it intended to call Mr. Carbajal as a

witness against Defendant Erasmo de la Paz Calixto at the trial currently set to begin on Monday, September 25, 2023, at 9:30 a.m. (ECF No. 55 at 2.) Ms. Becker ultimately accepted service of a subpoena compelling Mr. Carbajal to appear at Mr. Calixto's trial on Mr. Carbajal's behalf. (*Id.*) Shortly thereafter, Mr. Carbajal timely filed his notice of appeal from judgment and sentence. (ECF No. 47.) Now, asserting his Fifth Amendment right against self-incrimination, Mr. Carbajal moves to quash the Government's subpoena requiring his appearance and testimony at Mr. Calixto's trial.

The Motion is well-taken. Like all criminal defendants, Mr. Carbajal enjoys a privilege against self-incrimination guaranteed by the Fifth Amendment until such a time as his "sentence has been fixed and the judgment of conviction has become final." *See Mitchell v. United States*, 526 U.S. 314, 326 (1999) (citing *Reina v. United States*, 364 U.S. 507, 513 (1960)). Once a defendant's conviction is final, however, "there can be no further incrimination [and] there is no basis for the assertion of the privilege." *Id.* It is axiomatic that "a conviction is final when a 'judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally decided.'" *United States v. Smith*, 967 F.3d 1196, 1212 (11th Cir. 2020) (quoting *Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987)).


Here, because Mr. Carbajal's conviction is not final pending his direct appeal, (*see* ECF No. 47); *Smith*, 967 F.3d at 1212, and the possibility—if not the guarantee—that Mr. Carbajal will self-incriminate himself at trial remains, *see Mitchell*, 526 U.S. at 326; *United States v. Kennedy*, 372 F.3d 686, 689–90 (4th Cir. 2004) ("[A] defendant's right to invoke the Fifth Amendment as to events for which he has been convicted extends to the period during which the conviction is pending appeal. . . . Because any post-conviction evidence could be used against a

defendant if his conviction were to be overturned, the risk of coerced self-incrimination remains until the conviction has been affirmed on appeal.” (citing *Taylor v. Best*, 746 F.2d 220, 222 (4th Cir. 1984)), this Court will **QUASH** the Government’s subpoena requiring Mr. Carbajal’s appearance and testimony at Mr. Calixto’s trial. Accordingly, it is

ORDERED AND ADJUDGED that:

1. The Motion, (ECF No. 55), is **GRANTED**.
2. The subject subpoena is **QUASHED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 20 day of September, 2023.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE